Supreme Court, U.S.
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No. 02-1065

In The
Supreme Court of the United States

STEVE MAY,

Petitioner,

v.

JANICE BREWER, as Secretary of State of the State of Arizona, acting in her official capacity; DAVID PETERSON, as Treasurer of the State of Arizona, acting in his official capacity; the CLEAN ELECTIONS COMMISSION; and ARIZONANS FOR CLEAN ELECTIONS,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court of Arizona

RESPONSE TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Arizona's surcharge on civil and criminal fines to fund a public campaign financing system is constitutional because it (1) furthers the compelling governmental interests of encouraging discussion of and participation in the political process and preventing corruption, (2) does not directly burden First Amendment rights, and (3) protects First Amendment interests by allocating funds to qualifying candidates in a viewpoint-neutral manner.

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INTRODUCTION

The Arizona Supreme Court upheld a surcharge on civil and criminal fines that funds a public campaign financing system. The State disburses money to qualifying candidates regardless of party or ideological position. In *Buckley v. Valeo*, 424 U.S. 1 (1976), this Court recognized that financing political campaigns with public funds does not violate the First Amendment even though the funds might be used to support speech to which some contributors would object. In *Board of Regents v. Southworth*, 529 U.S. 217 (2000), the Court recognized that when the government compels funding for the purpose of facilitating speech that encompasses an entire spectrum of ideas as opposed to speech that has a particular content, allocating the funds in a viewpoint-neutral manner fully protects the First Amendment interests of objectors. Because Arizona's campaign finance system facilitates speech that encompasses the entire spectrum of political ideas and allocates funds in a viewpoint-neutral manner, the Arizona Supreme Court correctly determined that a surcharge that funds this system does not violate the First Amendment.

Petitioner contends that the decision conflicts with this Court's opinions in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), *Keller v. State Bar of California*, 496 U.S. 1 (1990), and *United States v. United Foods, Inc.*, 533 U.S. 405 (2001). Those cases dealt with associations in which the government could constitutionally mandate membership even though doing so implicated First Amendment rights because compulsory membership furthered important governmental interests. The speech at issue in those cases reflected the particular viewpoints of the associations. The Court has held that members of such associations can be constitutionally required to

provide financial support for the associations' speech if it is "germane" to the purposes that allowed the government to mandate membership. The government cannot, however, condition opportunities to engage in certain employment or receive certain benefits upon a member's financial support of an association's speech with which the person disagrees and which is not germane to the purposes that justified compulsory membership. The Arizona Supreme Court correctly determined that these principles are inapplicable to Arizona's campaign financing system, which does not involve an association or the expression of any particular viewpoint and does not require payment of the surcharge as a condition to obtaining any lawful opportunity or benefit.

Petitioner also contends that the decision cannot be reconciled with the opinions of two other state courts of last resort, *Vermont Society of Association Executives v. Milne*, 779 A.2d 20 (Vt. 2001), and *Butterworth v. Republican Party of Florida*, 604 So.2d 477 (Fla. 1992). These opinions involved public campaign funding assessments that directly targeted speech in the form of lobbying activities and political contributions respectively. The courts struck down these assessments because they directly burdened First Amendment rights and the States could further their interests in publicly funding campaigns by less burdensome means. The Arizona Supreme Court correctly determined that these opinions do not inform the proper disposition of this case because (1) the surcharge does not directly burden any First Amendment rights and (2) Arizona's campaign financing system adequately protects First Amendment concerns by disbursing funds in a viewpoint-neutral manner, thereby attenuating the

connection between the surcharge payers and the messages that particular candidates communicate.

Because the decision comports with this Court's precedents and does not conflict with the cited opinions of other state courts, certiorari is not warranted.

STATEMENT OF THE CASE

Statutory Background

In the 1998 general election, Arizona's voters adopted a citizens' initiative by approving the Citizens Clean Elections Act ("the Act"). *See* A.R.S. §§ 16-940 through -961 (Pet. App. at 39a-76a). Reflecting the public's desire to improve integrity in Arizona government, to diminish the impact of special-interest money, and to encourage citizen participation in the political process, the Act is the most significant campaign finance reform legislation ever adopted in Arizona. *See* A.R.S. § 16-940 (Pet. App. at 39a-40a). It establishes a system of public funding for the election campaigns of candidates who voluntarily agree to limit their fundraising and spending in statewide and state legislative elections. The Citizens Clean Election Commission ("the Commission") implements the Act, promulgates rules, and distributes money to qualifying candidates from a clean elections fund. A.R.S. §§ 16-955 through -956 (Pet. App. at 62a-68a). The majority of the Act's funding comes from the ten percent surcharge that A.R.S. § 16-954(C) (Pet. App. at 60a) imposes on all civil and criminal fines and penalties collected under A.R.S. § 12-116.01. Petitioner, who received a parking ticket subject to the surcharge, challenges this funding source. The Act's other funding sources are: (1) a $5 state income

tax check-off; (2) a dollar-for-dollar income tax credit for fund contributions up to $500 or twenty percent of taxes owed, whichever is greater; and (3) a $100 annual fee imposed on certain classes of lobbyists. A.R.S. §§ 16-944, -954(A), (B) (Pet. App. at 44a, 59a-60a).

Proceedings Below

In 2001, Petitioner and others filed suit in the Maricopa County Superior Court of Arizona challenging the lobbyist fee and the surcharge. The suit alleged that the surcharge constituted compelled political speech in violation of the First Amendment. The trial court granted partial summary judgment to the Defendants based on its finding that the surcharge was constitutional and partial summary judgment to the Plaintiffs based on its finding that the lobbyist fee was not. *Lavis v. Bayless*, minute entry order, No. CV 2001-006078 (Dec. 21, 2001) (Pet. App. at 32a-38a). The trial court distinguished *Abood* and its progeny and relied on *Southworth* in holding that the surcharge was constitutional.

Petitioner filed a special action directly in the Arizona Supreme Court. After the court declined to accept jurisdiction, Petitioner filed a special action in the Arizona Court of Appeals. The Commission did not appeal the trial court's determination that the lobbyist fee was unconstitutional. Thus, the lobbyist fee is not at issue here. On June 17, 2002, the Arizona Court of Appeals ruled that the surcharge was unconstitutional. *May v. Superior Court*, 49 P.3d 285 (Ariz. App. 2002) (Pet. App. at 16a-31a).

The Commission sought review by the Arizona Supreme Court on June 28, 2002. The court unanimously ruled that the surcharge was constitutional on October 11,

2002. *May v. Superior Court*, 55 P.3d 768 (Ariz. 2002) (Pet. App. at 1a-15a). The court relied upon *Buckley* and *Southworth* as supporting its holding.

REASONS TO DENY THE PETITION

1. The Arizona Supreme Court's Decision Does Not Conflict with Relevant Decisions of This Court.

Petitioner concedes, as he must, that public campaign subsidies funded by voluntary check-offs or general appropriations are constitutional under *Buckley*. Pet. at 7-8. In *Buckley*, this Court upheld the Federal Election Campaign Act of 1971, which permitted taxpayers to direct through a voluntary check-off provision on their income tax returns that one dollar of their tax liability be allocated to qualifying presidential candidates from the general fund.[1] 424 U.S. at 85-109. In upholding the Act, the Court determined that the provision did not "abridge, restrict, or censor speech," but rather furthered First Amendment values by "us[ing] public money to facilitate and enlarge discussion and participation in the electoral process, goals vital to a self-governing people." *Id.* at 92-93. Petitioner incorrectly asserts, however, that such subsidies are unconstitutional under *Abood*, *Keller*, and *United Foods* if they are funded by surcharges on civil and criminal fines. Pet. at 15-16. He maintains that the Arizona Supreme Court erroneously

[1] Although the check-off provision was voluntary, the Court indicated that Congress could constitutionally have funded the campaign finance system with appropriations from the general fund even without a check-off provision. 424 U.S. at 91-92.

relied upon *Southworth*, which he interprets as being wholly limited to the university setting, in ruling that the surcharge at issue here was constitutional. Pet. at 12-13, 16-18. The Arizona Supreme Court correctly determined that *Abood* and its progeny are inapplicable and that the surcharge is constitutional under *Buckley* and *Southworth*. Pet. App. at 10a-11a. No reason exists for this Court to review this holding further.

a. *Abood* and Its Progeny Are Inapplicable.

The government may constitutionally compel private parties to associate and to fund an association's expressive activities when there is a sufficient justification for doing so. *Glickman v. Wileman Bros. & Elliott, Inc.*, 521 U.S. 457, 471-73 (1997). *Abood* and its progeny instruct that the government may not, however, require members of a compelled association to subsidize any of the association's ideological activities that are not germane to those interests that permitted the government to mandate membership in the association in the first place. *United Foods*, 533 U.S. at 413-15; *Keller*, 496 U.S. at 13-14; *Abood*, 431 U.S. at 233-36. The analysis that this Court developed in the *Abood* line of cases simply does not apply to the surcharge here for two reasons.

First, the "germaneness" test that *Abood* and its progeny established applies only to an involuntary association. The surcharge payers are not an association of any kind; they do not pursue a common interest. They have no relationship with one another beyond the fact that they have all paid a civil or criminal fine. They do not have a group identity that links them to the clean elections fund any more than taxpayers whose taxes go into the general

fund. Petitioner, in fact, conceded below in his Petition for Review and at oral argument that there is no association here. *See* Pet. App. at 8a. Consequently, germaneness is a meaningless concept in this case. There is no associational purpose against which to measure the germaneness of the speech in question.

Second, the *Abood* line of cases dealt with speech that had a specific content or viewpoint to which those compelled to contribute objected. *See United Foods*, 533 U.S. at 410 (framing the issue presented as "whether the government may underwrite and sponsor speech *with a certain viewpoint* using special subsidies exacted from a designated class of persons, some of whom object to the idea being advanced") (emphasis added); *see also Abood*, 431 U.S. at 232-36; *Keller*, 496 U.S. at 15. Although the contributors disagreed with the message that the organization was disseminating, they were forced to be associated with it. As the Arizona Supreme Court observed, the same is not true with respect to the surcharge payers because "the Clean Elections Act allocates money to all qualifying candidates, regardless of party, position, or message, and thus the surcharge payers are not linked to any specific message, position, or viewpoint." Pet. App. at 8a (citation omitted); *see also* A.R.S. §§ 16-950 through -951 (Pet. App. at 50a-54a). Because the clean election funds are disbursed in a viewpoint-neutral manner, Arizona's law simply does not implicate *Abood*'s principles.

Petitioner erroneously contends that *Abood* was based upon "the fact that the union engaged in political activities beyond those related to the collective bargaining agreement" rather than upon the contributors' objections to particular messages. Pet. at 13. In *Abood*, this Court identified the First Amendment right at issue as the right

to refrain from financially supporting ideological causes that one opposes. 431 U.S. at 234-36 and n.31. The Court did not require the contributors to identify the specific expenditures to which they objected because that (1) would have "confront[ed] an individual employee with the dilemma of relinquishing either his right *to withhold his support of ideological causes to which he object[ed]* or his freedom to maintain his own beliefs without public disclosure" and (2) would have burdened the employee with monitoring the "numerous and shifting expenditures" that the union might make that were unrelated to the associational purpose that justified the compelled contributions. *Id.* at 241 (emphasis added). The Court therefore held that the contributors' allegation that they opposed *any* ideological expenditures that were not germane to the union's collective bargaining purpose was sufficient. *Id.* The First Amendment right being vindicated was nevertheless predicated on the contributors' objections to a specific viewpoint. *See Abood*, 431 U.S. at 236 (holding that the union could only expend funds to advance ideological causes that were not germane to its duties as a collective bargaining representative if it obtained those funds from employees "who do not object to advancing those ideas"); *see also Glickman*, 521 U.S. at 471 (characterizing *Abood* as recognizing "a First Amendment interest in not being compelled to contribute to an organization whose expressive activities conflict with one's freedom of belief") (internal quotation marks omitted).

For all of the foregoing reasons, the Arizona Supreme Court correctly determined that *Abood* and its progeny are inapposite.

b. *Southworth* Provides the Appropriate Analysis and the Holding Below Is Clearly Faithful to That Decision.

In *Southworth*, a state university allocated a portion of its mandatory student activity fee to a fund that supported various student organizations that were engaged in ideological speech. 529 U.S. at 222-24. In upholding the system, this Court held that the germaneness test that *Abood* and *Keller* developed was "neither applicable nor workable," *id.* at 230, where the university's goal was not to compel funding of speech that had a specific viewpoint but instead was to compel funding of speech "for the sole purpose of facilitating the free and open exchange of ideas," *id.* at 229. The Court observed that in such a situation, "[t]o insist upon asking what speech is germane would be contrary to the very goal that the University seeks to pursue." *Id.* at 232.

The Court recognized that achieving the university's goal of free and open exchange of ideas would inevitably require some students to subsidize speech that they found "objectionable and offensive." *Id.* at 232. Nonetheless, the Court accepted the "important and substantial purposes" that the University was seeking to accomplish by "facilitat[ing] a wide range of speech" in the balance. *Id.* at 231. It decided that the objectors' First Amendment rights would be adequately protected if the government allocated the funds in a viewpoint-neutral fashion. *Id.* at 233 (holding that viewpoint neutrality was "[t]he proper measure" and "the principal standard of protection for objecting students").

The relationship between the surcharge payers and the clean elections fund closely parallels the relationship between the students and the student activity fund in

Southworth. Justice Souter's concurring opinion in *Southworth* distinguished the students' situation there from that of the union members in *Abood* and the bar association members in *Keller* as follows:

> [T]he relationship between the fee payer and the ultimately objectionable expression [in *Southworth*] is far more attenuated. In the union and bar association cases, an individual was required to join or at least drop money in the coffers of the very organization promoting messages subject to objection. The connection between the forced contributor and the ultimate message was as direct as the unmediated contribution to the organization doing the speaking. The student contributor, however, has only to fund a distributing agency having itself no social, political, or ideological character and itself engaging . . . in no expression of any distinct message. Indeed, the disbursements, varying from year to year, are as likely as not to fund an organization that disputes the very message an individual student finds exceptionable. Thus, the clear connection between fee payer and offensive speech that loomed large in our decisions in the union and bar cases is simply not evident here.

Southworth, 529 U.S. at 240 (Souter, J., concurring) (citations omitted). The same distinctions exist here. Like the student activity fee, the surcharge finances a fund that is disbursed in a viewpoint-neutral manner and that does not disseminate any messages itself. There is no greater connection between the surcharge payers and candidates' messages than there is between those messages and any taxpayers in the State of Arizona.

Justice Souter also concluded that the students' objections had "less force than [they] might otherwise carry because the challenged fees support[ed] a government program that aim[ed] to broaden public discourse." *Id.* at 240-41. Of course, *Buckley* suggested that the government could properly use its tax revenues for this purpose. Similarly, Arizona's Clean Elections Act is aimed at broadening public discourse. The voters intended it to "encourage citizen participation in the political process," "promote freedom of speech," and improve communication between candidates and voters. *See* A.R.S. § 16-940 (Pet. App. at 39a-40a).[2]

In sum, the clean elections funding system, like the program in *Southworth*, (1) serves the compelling governmental interests of promoting discussion of and participation in the political process and helping to prevent corruption and (2) protects First Amendment rights by allocating money in a viewpoint-neutral manner, thereby attenuating the connection between the surcharge payers and the messages that particular candidates communicate. The Arizona Supreme Court therefore correctly determined that the clean elections surcharge was constitutional under *Southworth*.

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[2] Petitioner cites *Wooley v. Maynard*, 430 U.S. 705 (1977), and *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). Pet. at 6. In *Wooley*, the government impermissibly compelled speech by requiring the plaintiff to display a license plate bearing a state motto that the plaintiff found offensive. In *Barnette*, the government impermissibly compelled speech by requiring students to salute the flag. There is no comparison between the compelled speech in those cases and the use of a surcharge to fund electoral campaigns on a viewpoint-neutral basis.

c. Petitioner's Attempts to Distinguish *Southworth* Are Unavailing.

Petitioner contends that *Southworth* applies only in the university setting because a university's broad mission is "to discover and disseminate knowledge." Pet. at 17 (internal quotation marks omitted). As the Arizona Supreme Court observed, however, "[w]hile a university is certainly one venue in which the free and open exchange of ideas is encouraged, it is not the only one." Pet. App. 10a. The court correctly determined that *Southworth*'s principles were equally applicable to Arizona's public campaign financing system, which encourages the free and open exchange of ideas in the political arena.

Petitioner's other attempts to distinguish *Southworth* also fail. He notes that association is voluntary in the university setting. Pet. at 17. Attending a university or joining a student group is voluntary. Paying the student activity fee in *Southworth*, which was the basis for the lawsuit, however, was not voluntary.[3] Petitioner argues that the activity fee in *Southworth* was imposed upon all of the students, whereas the clean elections surcharge is

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[3] Petitioner also observes that the fee could not be used to fund students' partisan political activities or student groups that were primarily politically oriented. Pet. at 17. The First Amendment, however, protects the right to express (or not to express) all beliefs, not just political ones. *Abood*, 431 U.S. at 231. This Court has recognized that "[n]othing in the First Amendment or our cases discussing its meaning makes the question whether the adjective 'political' can properly be attached to those beliefs the critical constitutional inquiry." *Id.* at 232. The student activity fee in *Southworth* would therefore have been just as valid if the university had permitted funding of speech concerning political issues, as long it disbursed the funds in a viewpoint-neutral manner.

imposed only upon a discrete subset of the community. Pet. at 17. The surcharge is not targeted at a discrete group. It applies to all Arizonans. Anyone who has to pay a civil or criminal fine must also pay the surcharge.

Petitioner notes that funding the clean elections system with a surcharge on fines deprives people of the right to decide that they do not wish to contribute to the political process at all. Pet. at 18. This does not render the system unconstitutional. This Court recognized in *Southworth* that the student activity funding system implicated the students' First Amendment rights and would inevitably result in some students being required to subsidize speech that they found to be "objectionable and offensive to their personal beliefs." *Southworth*, 529 U.S. at 231-32. The Court nevertheless determined that the viewpoint-neutrality requirement adequately alleviated any First Amendment concerns. *Id.* at 233-34. Given the similarities between the two systems, the viewpoint-neutrality requirement adequately alleviates any First Amendment concerns with respect to the clean elections funding system as well.

Moreover, this Court noted in *Buckley* that every congressional appropriation "uses public money in a manner to which some taxpayers object." 424 U.S. at 92. The Court has recognized in other cases that government could not function if individual taxpayers could veto appropriations that offended their personal beliefs. *See Southworth,* 529 U.S. at 229; *United States v. Lee*, 455 U.S. 252, 260 (1982). Thus, the fact that a surcharge payer may believe that public funding of elections is not good

public policy does not render the surcharge unconstitutional.[4]

For all of the foregoing reasons, Petitioner's attempts to distinguish *Southworth*'s governing principles fail.

2. There Is No Conflict Among State Courts of Last Resort for This Court to Resolve.

Petitioner asserts that the decisions of other state courts of last resort concerning First Amendment challenges to public campaign financing systems funded by assessments cannot be reconciled with the Arizona Supreme Court's decision in this case. Pet. at 7-12. The cases that Petitioner cites, *Vermont Society of Association Executives v. Milne*, 779 A.2d 20 (Vt. 2001), and *Butterworth v. Republican Party of Florida*, 604 So.2d 477 (Fla. 1992), do not conflict with the Arizona Supreme Court's decision. They simply reach a different result based upon fundamentally different facts that affect the extent to which the assessments at issue burden First Amendment rights. There is no other decision involving the kind of subsidy Arizona has adopted, and thus the issue here is

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[4] Petitioner also argues that the system is not viewpoint-neutral because only the candidates who are not philosophically opposed to public funding of elections seek to obtain clean elections funding. Pet. at 18. As the Arizona Supreme Court noted, *Southworth*'s viewpoint-neutrality requirement applies to the government's method of allocating funds, not to the viewpoints being subsidized. Pet. App. at 11a. The system distributes clean elections funds to any qualifying candidate regardless of party, ideology, or philosophical opposition to public funding of elections and thus satisfies the requirement. *See* A.R.S. §§ 16-950 through -951 (Pet. App. at 50a-54a).

one of first impression that is inherently unripe for this Court's review.

In *Milne*, the court considered a public campaign fund assessment on expenditures that (1) were made by lobbyists or their employers and (2) were connected with communications or activities aimed at influencing legislation or administrative action. The court recognized the following principles. The First Amendment protects lobbying because it "directly involves core political speech that lies at the very heart of what the First Amendment was designed to safeguard." 779 A.2d at 23-25. The government can regulate First Amendment activity and can impose a fee limited to the cost of doing so. *Id.* at 25. It can also apply generally applicable taxes to First Amendment activities. *Id.* at 25-26. It cannot, however, single out First Amendment activities for special taxation because doing so can abridge First Amendment rights as surely as prohibiting such activities. *Id.*

Because the assessment at issue was "a completely unique type of tax triggered exclusively by core political speech concerning the right to petition one's government," *id.* at 30, the court subjected it to heightened scrutiny, *id.* at 25-31. That is, it required the State to demonstrate that it had a compelling counterbalancing interest that it could not achieve without such differential taxation. *Id.* at 26. Because the assessment at issue did not further any state interest other than raising revenue for the public campaign fund and the State could raise revenue by alternative means, the court invalidated it. *Id.* at 31.

Arizona's surcharge, in contrast, is not imposed upon or triggered by First Amendment activity. It is triggered by having to pay a fine for breaking the law. Moreover, there

is no expressive conduct connected with paying a fine. Consequently, it does not require heightened scrutiny. To the extent that the surcharge implicates First Amendment concerns, the clean elections system ameliorates those concerns by disbursing funds in a viewpoint-neutral manner, thereby attenuating the connection between the surcharge payers and the messages that particular candidates communicate.[5]

Butterworth also involved a public campaign fund assessment that targeted First Amendment rights. The assessment was imposed upon contributions that political parties and committees received. 604 So.2d at 478-79. The court recognized that the First Amendment protects the right to make such contributions because "supporting a political candidate financially is speech and represents political expression at the core of the electoral process." *Id.* at 479. The court noted that the assessment funded political candidates whom the political parties and committees did not support and political causes with which they did not agree. *Id.* at 479-80. The court further noted that the assessment penalized individuals for exercising their rights to contribute to and associate with political parties because it required them to finance persons and

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[5] Petitioner asserts that the court rejected the defense of "viewpoint neutrality." Pet. at 10. It did not do so in the context in which *Southworth* discussed viewpoint neutrality. It instead rejected the argument that a tax burdening First Amendment interests was unconstitutional only if it suppressed the expression of particular ideas or viewpoints. 779 A.2d at 27-28. This does not conflict with *Southworth*'s holding that where the government compels funding for the purpose of facilitating speech that encompasses an entire spectrum of ideas, allocating the funds in a viewpoint-neutral manner adequately protects the First Amendment rights of objectors. 529 U.S. at 232-33.

causes that they did not support as a price for doing so. *Id.* at 481. The court therefore characterized the assessment as a fee that the government was in effect charging for the privilege of exercising First Amendment rights. *Id.* at 480 n.4. Because the assessment directly burdened First Amendment free speech and associational rights, the court subjected it to heightened scrutiny. *Id.* at 480. The court struck down the assessment because the State had other means of furthering its interest in supporting the public campaign fund that did not infringe on First Amendment rights. *Id.* at 480-81.

Petitioner seriously mischaracterizes *Butterworth* by asserting that the court struck down the assessment because it did not satisfy *Abood*'s germaneness test. Pet. at 9-10. The court did not even mention the germaneness test. Because the assessment directly burdened First Amendment rights, the court scrutinized it to determine whether it served a compelling governmental interest and was narrowly tailored to serve that interest. 604 So.2d at 480.

Because the differences in the outcomes in *Milne* and *Butterworth* on one hand and the present case on the other are appropriately based upon profound differences in the extent to which the assessments at issue burden First Amendment rights, they do not present any conflict between state courts of last resort for this Court to resolve. They certainly do not conflict on the question whether a subsidy paid by recipients of civil and criminal fines can be used to fund electoral campaigns on a viewpoint-neutral basis.

Petitioner also cites *Libertarian Party of Indiana v. Packard*, 741 F.2d 981 (7th Cir. 1984), in an attempt to

demonstrate that there is confusion in this area because he believes that the case may have imposed a voluntariness requirement in addition to a viewpoint-neutrality requirement. Pet. at 12. Petitioner's attempt fails, however, because the court specifically said that voluntariness was not central to its analysis. Moreover, although the decision predates *Southworth*, its reasoning anticipates the reasoning of *Southworth* and the Arizona Supreme Court in this case.[6]

Because there is no conflict among state courts of last resort for this Court to resolve, certiorari is not warranted.

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[6] Petitioner's assertion that the Seventh Circuit "emphasized" that the tax there involved no compulsion, Pet. at 12, is belied by the court's clear language. The court noted that although Congress had raised the money to fund qualifying political parties in *Buckley* through a voluntary tax check-off provision, this Court had explicitly suggested that Congress could also have appropriated the money from general revenues raised through taxes. 741 F.2d at 989. The court observed that the personalized license plate scheme differed from a general appropriation in that each member of the public could control the amount of money to be distributed to political parties by his or her decision as to whether to buy a license plate. *Id.* at 990. The court then said that this element of control was clearly insufficient to implicate the First Amendment, citing the tax check-off provision in *Buckley*. Thus, the court actually said that voluntariness was *not* significant to its analysis. The court's reasoning therefore is not emblematic of any confusion in this area and is, in fact, consistent with the reasoning of *Southworth* and the Arizona Supreme Court in the present case.

CONCLUSION

This Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

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